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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID LOWERY, individually and on behalf of himself and all others similarly situated,
Plaintiffs,
vs.
SPOTIFY USA INC., a Delaware corporation,
Defendants.

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SPOTIFY USA INC



Case No. 2:15-cv-09929-BRO-RAOx
STIPULATED PROTECTIVE ORDER¹

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1 This Stipulated Protective Order is substantially based on the model protective
order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 Case No. 16-CV-180-BRO-RAOx
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MELISSA FERRICK, individually and
doing business as Nine Two One Music
and Right On Records/Publishing;
JACO PASTORIUS, INC., and on
behalf of all others similarly situated,

Plaintiffs,

v.

SPOTIFY USA INC., a Delaware
corporation, and DOES 1 through 10,

Defendant.

10 1. A. PURPOSES AND LIMITATIONS

11 Discovery in this action is likely to involve production of confidential,
12 proprietary or private information for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation may
14 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
15 enter the following Stipulated Protective Order. The parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to
17 discovery and that the protection it affords from public disclosure and use extends
18 only to the limited information or items that are entitled to confidential treatment
19 under the applicable legal principles.

20 B. GOOD CAUSE STATEMENT

21 This action is likely to involve trade secrets, customer and pricing lists and
22 other valuable research, development, commercial, financial, technical and/or
23 proprietary information for which special protection from public disclosure and
from use for any purpose other than prosecution of this action is warranted. Such
24 confidential and proprietary materials and information consist of, among other
25 things, confidential business or financial information, information regarding
26 confidential business practices, or other confidential research, development, or
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1 commercial information (including information implicating privacy rights of third
2 parties), information otherwise generally unavailable to the public, or which may
3 be privileged or otherwise protected from disclosure under state or federal statutes,
4 court rules, case decisions, or common law. Accordingly, to expedite the flow of
5 information, to facilitate the prompt resolution of disputes over confidentiality of
6 discovery materials, to adequately protect information the parties are entitled to
7 keep confidential, to ensure that the parties are permitted reasonable necessary uses
8 of such material in preparation for and in the conduct of trial, to address their
9 handling at the end of the litigation, and serve the ends of justice, a protective order
10 for such information is justified in this matter. It is the intent of the parties that
11 information will not be designated as confidential for tactical reasons and that
12 nothing be so designated without a good faith belief that it has been maintained in
13 a confidential, non-public manner, and there is good cause why it should not be
14 part of the public record of this case.

15 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
16 SEAL

17 The parties further acknowledge, as set forth in Section 12.3, below, that this
18 Stipulated Protective Order alone does not entitle them to file confidential
19 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
20 be followed and the standards that will be applied when a party seeks permission
21 from the court to file material under seal.

22 There is a strong presumption that the public has a right of access to judicial
23 proceedings and records in civil cases. In connection with non-dispositive motions,
24 good cause must be shown to support a filing under seal. See *Kamakana v. City*
25 and *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
26 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
27 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective

1 orders require good cause showing), and a specific showing of good cause or
 2 compelling reasons with proper evidentiary support and legal justification, must be
 3 made with respect to Protected Material that a party seeks to file under seal. The
 4 parties' mere designation of Disclosure or Discovery Material as
 5 "CONFIDENTIAL," or "CONFIDENTIAL – COUNSEL'S EYES ONLY," does
 6 not without the submission of competent evidence by declaration, establishing that
 7 the material sought to be filed under seal qualifies as confidential, privileged, or
 8 otherwise protectable—constitute good cause.

9 Further, if a party requests sealing related to a dispositive motion or trial,
 10 then compelling reasons, not only good cause, for the sealing must be shown, and
 11 the relief sought shall be narrowly tailored to serve the specific interest to be
 12 protected. *See Pintos v. Pacific Creditors Ass'n* 605 F.3d 665, 677-79 (9th Cir.
 13 2010). For each item or type of information, document, or thing sought to be filed
 14 or introduced under seal in connection with a dispositive motion or trial, the party
 15 seeking protection must articulate compelling reasons, supported by specific facts
 16 and legal justification, for the requested sealing order. Again, competent evidence
 17 supporting the application to file documents under seal must be provided by
 18 declaration.

19 Any document that is not confidential, privileged, or otherwise protectable
 20 in its entirety will not be filed under seal if the confidential portions can be
 21 redacted. If documents can be redacted, then a redacted version for public viewing,
 22 omitting only the confidential, privileged, or otherwise protectable portions of the
 23 document, shall be filed. Any application that seeks to file documents under seal
 24 in their entirety should include an explanation of why redaction is not feasible.

25 **2. DEFINITIONS**

26 **2.1 Action:** this pending federal lawsuit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 Confidential Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” or “CONFIDENTIAL – COUNSEL’S EYES ONLY”.

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a Party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that Party, and includes support staff.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, affiliates, and Outside Counsel of Record
3 (and their support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “CONFIDENTIAL – COUNSEL’S EYES
12 ONLY”. Protected Material is “CONFIDENTIAL” if it is information that is non-
13 public, proprietary, commercially sensitive, and/or subject to third party privacy or
14 confidentiality restrictions. Protected Material is “CONFIDENTIAL –
15 COUNSEL’S EYES ONLY” if it is information that qualifies
16 as“CONFIDENTIAL” and is extremely sensitive, the disclosure of which to
17 another party would create risk of competitive injury.

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 2.16 Source Code Material: material that contains or substantively relates
21 to computer source code and/or live data (that is, data as it exists residing in a
22 database or databases) and documents containing source code or algorithms and
23 data upon which the source code is based.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
 2 presentations by Parties or their Counsel that might reveal Protected Material.

3 This Order does not contemplate the production of Source Code Material.
 4 The Parties do not contemplate the production of Source Code Material in this
 5 action. In the event a Party requests that another Party make available Source
 6 Code Material, the Requesting Party shall notify all Parties before engaging the
 7 Producing Party in negotiations regarding a separate source code protective order
 8 and all Parties will collectively negotiate a protective order governing the
 9 production of Source Code Material. No Party is required to produce or make
 10 available for inspection any Source Code Material until the Court has entered a
 11 separate protective order governing the treatment of Source Code Material.

12 **4. DURATION AND USE OF PROTECTED MATERIAL**

13 Once a case proceeds to trial, information that was designated as
 14 **CONFIDENTIAL** or maintained pursuant to this protective order used or
 15 introduced as an exhibit at trial will be presumptively available to all members of
 16 the public, including the press, unless compelling reasons supported by specific
 17 factual findings to proceed otherwise are made to the trial judge in advance of the
 18 trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing good cause showing for
 19 sealing documents produced in discovery from “compelling reasons standard when
 20 merits-related documents are part of court record). Accordingly, the terms of this
 21 protective order do not extend beyond the commencement of the trial. Sufficiently
 22 prior to trial, the parties will meet-and-confer to address the treatment of any
 23 Protected Material at trial.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

26 Each Party or Non-Party that designates information or items for
 27 protection under this Order must take care to limit any such designation to specific

1 material that qualifies under the appropriate standards. The Designating Party
 2 must designate for protection only those parts of material, documents, items or oral
 3 or written communications that qualify so that other portions of the material,
 4 documents, items or communications for which protection is not warranted are not
 5 swept unjustifiably within the ambit of this Order.

6 Indiscriminate or routinized designations are prohibited. Designations that
 7 are shown to be clearly unjustified or that have been made for an improper purpose
 8 (e.g., to unnecessarily encumber the case development process or to impose
 9 unnecessary expenses and burdens on other parties) may expose the Designating
 10 Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
 12 designated for protection do not qualify for protection, that Designating Party must
 13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 17 under this Order must be clearly so designated before the material is disclosed or
 18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
 21 documents, but excluding transcripts of depositions or other pretrial or trial
 22 proceedings), that the Producing Party affix at a minimum, the legend
 23 "CONFIDENTIAL" or "CONFIDENTIAL – COUNSEL'S EYES ONLY"
 24 (hereinafter the "CONFIDENTIALITY LEGEND"), to each page that contains
 25 protected material. If only a portion of the material on a page qualifies for
 26 protection, the Producing Party also must clearly identify the protected portion(s)
 27 (e.g., by making appropriate markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection
2 need not designate them for protection until after the inspecting Party has indicated
3 which documents it would like copied and produced. During the inspection and
4 before the designation, all of the material made available for inspection shall be
5 deemed “CONFIDENTIAL – COUNSEL’S EYES ONLY.” After the inspecting
6 Party has identified the documents it wants copied and produced, the Producing
7 Party must determine which documents, or portions thereof, qualify for protection
8 under this Order. Then, before producing the specified documents, the Producing
9 Party must affix the CONFIDENTIALITY LEGEND to each page that contains
10 Protected Material. If only a portion of the material on a page qualifies for
11 protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 5.3 Inadvertent Failures to Designate. Inadvertent failure to timely
14 designate material as “CONFIDENTIAL” or “CONFIDENTIAL – COUNSEL’S
15 EYES ONLY” shall not constitute a waiver of the Producing Party’s ability to
16 designate material as Confidential Information at a later time. Any party that
17 inadvertently or unintentionally produces Confidential Information without
18 designating it as Protected Material may request destruction of that Protected
19 Material by notifying the recipient(s), as soon as reasonably possible after the
20 Producing Party becomes aware of the inadvertent or unintentional disclosure, and
21 providing replacement Protected Material that is properly designated. The
22 recipient(s) shall then destroy all copies of the inadvertently or unintentionally
23 produced Protected Material and any documents, information or material derived
24 from or based thereon. Upon correction of a designation, the Receiving Party must
25 make reasonable efforts to assure that the material is treated in accordance with the
26 provisions of this Order.

1 5.4 Changes to Designations. A party may upward designate (i.e.
 2 change any documents without a designation to a designation of
 3 “CONFIDENTIAL” or “CONFIDENTIAL-COUNSEL’S EYES ONLY”) any
 4 Disclosure or Discovery Material produced by any other Party or Non-Party,
 5 provided that said Disclosure or Discovery Material contains the upward
 6 designating party’s own Protected Material, or otherwise is entitled to protective
 7 treatment under Fed. R. Civ. P. 26(c). Upward designation shall be accomplished
 8 by providing written notice to all parties identifying (by Bates number or other
 9 individually identifiable information) the Disclosure or Discovery Information to
 10 be re-designated. Any party may object to the upward designation of Disclosure or
 11 Discovery Material pursuant to the procedures set forth herein regarding
 12 challenging designations.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 15 designation of confidentiality at any time that is consistent with the Court’s
 16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 18 resolution process under Local Rule 37.1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be
 20 on the Designating Party. Frivolous challenges, and those made for an improper
 21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 22 parties) may expose the Challenging Party to sanctions. Unless the Designating
 23 Party has waived or withdrawn the confidentiality designation, all parties shall
 24 continue to afford the material in question the level of protection to which it is
 25 entitled under the Producing Party’s designation until the Court rules on the
 26 challenge.

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7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel and in-house legal staff) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), provided that:

(1) such Experts are not presently employed by the Parties hereto for purposes other than this Action;

8 Within ten (10) days of receipt of the disclosure of the Expert, the Producing
9 Party or Parties may object in writing to the Expert for good cause. For purposes
10 of this section, “good cause” shall include an objectively reasonable concern that
11 the Expert will, advertently or inadvertently, use or disclose the Protected Material
12 in a way or ways that are inconsistent with the provisions contained in this Order.
13 In the absence of an objection at the end of the ten (10) day period, the Expert shall
14 be deemed approved under this Protective Order.

15 The Producing Party may object to and notify the Receiving Party in writing
16 that it objects to disclosure of Protected Material to the Expert. The Parties agree
17 to promptly confer and use good faith to resolve any such objection. If the Parties
18 are unable to resolve any objection, the objecting Party may file a motion with the
19 Court within fifteen (15) days of the notice, or within such other time as the Parties
20 may agree, seeking a protective order with respect to the proposed disclosure. No
21 disclosure shall occur until all such objections are resolved by agreement or Court
22 order.

23 An initial failure to object to an Expert under this paragraph shall not
24 preclude the non-objecting Party from later objecting to continued access by that
25 Expert for good cause. If an objection is made, the Parties shall meet and confer
26 via telephone or in person within five (5) days following the objection and attempt
27 in good faith to resolve the dispute informally. If the dispute is not resolved, the

1 Party objecting to the disclosure will have five (5) days from the date of the meet
2 and confer to seek relief from the Court. The designated Expert may continue to
3 have access to information that was provided to such Expert prior to the date of the
4 objection. If a later objection is made, no further Protected Material shall be
5 disclosed to the Expert until the Court resolves the matter or the Producing Party
6 withdraws its objection. Notwithstanding the foregoing, if the Producing Party
7 fails to move for a protective order within five (5) business days after the meet and
8 confer, further Protected Material may thereafter be provided to the Expert;

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and
12 Professional Vendors to whom disclosure is reasonably necessary for this Action
13 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
14 A);

15 (g) the author or recipient of a document containing the information
16 or a custodian or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses, and attorneys for witnesses,
18 in the Action to whom disclosure is reasonably necessary provided: (1) the
19 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
20 and (2) they will not be permitted to keep any confidential information unless they
21 sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
22 otherwise agreed by the Designating Party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal Protected
24 Material may be separately bound by the court reporter and may not be disclosed to
25 anyone except as permitted under this Stipulated Protective Order;

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(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions; and

7 7.3 Disclosure of Protected Material Designated “CONFIDENTIAL –
8 COUNSEL’S EYES ONLY.” Unless ordered by the Court or permitted in writing
9 by the Designating Party, a Receiving Party may disclose any information or item
10 designated “CONFIDENTIAL – COUNSEL’S EYES ONLY,” only to the
11 Receiving Party’s Outside Counsel of Record and the Receiving Party’s House
12 Counsel (as defined above) and their immediate paralegals and staff, and any
13 copying or clerical litigation support services working at the direction of such
14 counsel, paralegals, and staff.

15 || 8. DISCOVERY OF EXPERT MATERIALS.

Drafts of reports of testifying Experts, and reports and other written materials, including drafts, of consulting Experts, shall not be discoverable. Testifying Experts shall not be subject to discovery with respect to any draft of his or her report(s) in this case. Draft notes or outlines for draft reports developed and drafted by the testifying expert and/or his or her staff are also exempt from discovery. Discovery of materials provided to testifying Experts shall be limited to those materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying Expert in forming his or her final report, trial, or deposition testimony or any opinion in this case. No discovery can be taken from any non-testifying Expert except to the extent that such non-testifying Expert has provided information, opinions, or other materials to a testifying Expert relied upon by that testifying Expert in forming his or her final report(s), trial, and/or deposition

1 testimony or any opinion in this case. No conversations or communications
2 between counsel and any testifying or consulting Expert will be subject to
3 discovery unless the conversations or communications are relied upon by such
4 experts in formulating opinions that are presented in reports or trial or deposition
5 testimony in this case. All drafts, materials, communications, and other
6 information exempt from discovery under this paragraph shall be treated as
7 attorney-work product for the purposes of this litigation and Order.

8 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL” or “CONFIDENTIAL – COUNSEL’S EYES ONLY,” that
13 Party must:

14 (a) promptly notify in writing the Designating Party. Such
15 notification shall include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or
17 order to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this Protective Order. Such notification shall include
19 a copy of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as “CONFIDENTIAL” or “CONFIDENTIAL – COUNSEL’S EYES
25 ONLY,” before a determination by the court from which the subpoena or order
26 issued, unless the Party has obtained the Designating Party’s permission. The
27 Designating Party shall bear the burden and expense of seeking protection in that

1 court of its confidential material and nothing in these provisions should be
 2 construed as authorizing or encouraging a Receiving Party in this Action to
 3 disobey a lawful directive from another court.

4 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
 5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced
 7 by a Non-Party in this Action and designated as "CONFIDENTIAL" or
 8 "CONFIDENTIAL – COUNSEL'S EYES ONLY". Such information produced by
 9 Non-Parties in connection with this litigation is protected by the remedies and relief
 10 provided by this Order. Nothing in these provisions should be construed as
 11 prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request,
 13 to produce a Non-Party's confidential information in its possession, and the Party is
 14 subject to an agreement with the Non-Party not to produce the Non-Party's
 15 confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the
 17 Non-Party that some or all of the information requested is subject to a
 18 confidentiality agreement with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the
 20 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
 21 reasonably specific description of the information requested; and

22 (3) make the information requested available for inspection
 23 by the Non-Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court
 25 within 14 days of receiving the notice and accompanying information, the
 26 Receiving Party may produce the Non-Party's confidential information responsive
 27 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that
 2 is subject to the confidentiality agreement with the Non-Party before a
 3 determination by the court. Absent a court order to the contrary, the Non-Party
 4 shall bear the burden and expense of seeking protection in this court of its Protected
 5 Material.

6 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
 8 disclosed Protected Material to any person or in any circumstance not authorized
 9 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 10 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 11 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
 12 the person or persons to whom unauthorized disclosures were made of all the terms
 13 of this Order, and (d) request such person or persons to execute the
 14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
 15 Exhibit A.

16 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 17 PROTECTED MATERIAL

18 (a) When a Producing Party gives notice to Receiving Parties that certain
 19 inadvertently produced material is subject to a claim of privilege or other
 20 protection, the obligations of the Receiving Parties are those set forth in Federal
 21 Rule of Civil Procedure 26(b)(5)(B), as modified below (deletions ~~struck through~~;
 22 additions underlined):

23 (b) Information Produced. If information produced in discovery is
 24 subject to a claim of privilege or of protection as trial-preparation material, the
 25 party making the claim may notify any party that received the information of the
 26 claim and the basis for it. After being notified, a party must promptly return,
 27 sequester, or destroy the specified information and any copies it has; must not use

1 or disclose the information until the claim is resolved; must take reasonable steps
2 to retrieve and return or destroy the information if the party disclosed it before
3 being notified; and may promptly present ~~the information any challenge to the~~
4 privilege claim to the court pursuant to Local Rule 37.1 under seal for a
5 determination of the claim. The producing party must preserve the information
6 until the claim is resolved.

(b) This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

(c) Pursuant to Federal Rule of Evidence 502(d) and (e), the parties have reached an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, as follows: The Parties anticipate that significant volumes of documents and information will be produced and that there is a risk that, despite the exercise of reasonable steps to prevent disclosure, material subject to a claim of privilege may be produced. Rule 502(d) provides that a “federal court may order that the privilege protection is not waived by disclosure connected with the litigation pending before the court – in which event the disclosure is also not a waiver in any other federal or state proceeding.” Fed. R. Evid. 502(d). Rule 502(d); *see also Venture Corp. Ltd. v. Barrett*, 2015 WL 1940230, at *2 (N.D. Cal. Apr. 29, 2015) (Rule 502(d) “allows the clawing back of an inadvertent production of privileged material without any risk of waiver even where the producing party has not conducted any privilege review.”). Accordingly, the Parties’ stipulated Rule 502(d) order is hereby incorporated into this Stipulated Protective Order.

25 || 13. MISCELLANEOUS

26 13.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification by the Court in the future.

1 13.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on
5 any ground to use in evidence of any of the material covered by this Protective
6 Order.

7 13.3 Filing Protected Material. The Parties will comply with Local Civil
8 Rule 79-5 regarding the filing and use of Protected Material. Consistent with this
9 Local Civil Rule, before filing with the Court any transcript, exhibit, pleading,
10 brief, or other document containing information designated as Protected Material,
11 the Parties will seek approval of the Court for filing such Protected Material under
12 seal or, if the material has been designated by another Party, provide the Producing
13 Party with a minimum of three (3) business days' notice prior to filing, in order to
14 allow the Producing Party an opportunity to seek approval of the Court to file such
15 Protected Material under seal. Protected Material may only be filed under seal
16 pursuant to a court order authorizing the sealing of the specific Protected Material
17 at issue. If a Party's request to file Protected Material under seal is denied by the
18 court, then the Receiving Party may file the information in the public record unless
19 otherwise instructed by the Court.

20 14. FINAL DISPOSITION

21 After the final disposition of this Action, within 60 days of a written request
22 by the Designating Party, each Receiving Party must return all Protected Material
23 to the Producing Party or destroy such material. As used in this subdivision, "all
24 Protected Material" includes all copies, abstracts, compilations, summaries, and
25 any other format reproducing or capturing any of the Protected Material. Whether
26 the Protected Material is returned or destroyed, the Receiving Party must submit a
27 written certification to the Producing Party (and, if not the same person or entity, to

1 the Designating Party) by the 60 day deadline that (1) identifies (by category,
 2 where appropriate) all the Protected Material that was returned or destroyed and
 3 (2) affirms that the Receiving Party has not retained any copies, abstracts,
 4 compilations, summaries or any other format reproducing or capturing any of the
 5 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
 6 (1) an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 8 reports, attorney work product, and consultant and expert work product, even if
 9 such materials contain Protected Material; and (2) any copies of Protected Material
 10 created by the routine operation of backup procedures for a Party's or a Party's
 11 Counsel's information storage systems. Any such archival copies that contain or
 12 constitute Protected Material remain subject to this Protective Order.

13 **15. VIOLATION**

14 Any violation of this Order may be punished by appropriate measures
 15 including, without limitation, contempt proceedings and/or monetary sanctions. In
 16 the event motion practice is required to enforce the terms of this Order, and a party
 17 is found by the Court to have willfully violated the terms of this Order, the
 18 prevailing party on such a motion shall be awarded costs, expenses, and fees,
 19 including attorney or other professional fees, incurred in connection with the
 20 discovery of the violation and the preparation, filing, and arguing of the motion or
 21 any other proceedings resulting from the violation.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23 DATED: June 8, 2016

SUSMAN GODFREY L.L.P.

24 /s/ Kalpana Srinivasan

25 Kalpana Srinivasan

26 *Interim Co-Lead Class Counsel*

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1 DATED: June 8, 2016

MAYER BROWN LLP

2 /s/ John Nadolenco

3 John Nadolenco

4 *Attorneys for Defendant*

Spotify USA Inc.

5
6 FOR GOOD CAUSE SHOWN, IT IS ORDERED.

7 DATED: June 8, 2016

Rozella A. Oliver

8 ROZELLA A. OLIVER

9 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on [date] in the cases of *Lowery, et al. v. Spotify*
USA Inc., 2:15-cv-09929 BRO-RAOx and *Ferrick, et al. v. Spotify USA, Inc.*, 2:16-
cv-00180 BRO-RAOx. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address, email address,
21 and telephone number] as my California agent for service of process in connection
22 with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order.

24 || Date:

25 | City and State where sworn and signed:

26 Printed name:

27 | Signature: